

32B-11-101. Title.

This chapter is known as the "Manufacturing and Related Licenses Act."

Enacted by Chapter 276, 2010 General Session

32B-11-102. Definitions.

As used in this chapter, "manufacturing license" means an alcoholic product manufacturing license issued under this chapter.

Enacted by Chapter 276, 2010 General Session

**32B-11-201. Commission's power to issue a manufacturing license --
Certificates of approval.**

(1) (a) Except as provided in Section 32B-11-202, before a person may manufacture an alcoholic product in this state, the person shall obtain an alcoholic product manufacturing license issued by the commission in accordance with this part.

(b) A separate license is required for each place of storage, sale, and manufacture of an alcoholic product.

(c) A violation of this Subsection (1) is a class B misdemeanor.

(2) The commission may issue an alcoholic product manufacturing license to a manufacturer whose business is located in this state for the storage, sale, and manufacture of an alcoholic product for each type of manufacturing license provided by this chapter.

(3) The types of manufacturing licenses issued under this chapter are known as:

- (a) a winery manufacturing license;
- (b) a distillery manufacturing license; and
- (c) a brewery manufacturing license.

(4) (a) A brewer located outside the state is not required to be licensed under this chapter.

(b) A brewer described in Subsection (4)(a) shall obtain a certificate of approval from the department before selling or delivering:

- (i) beer to a beer wholesaler licensee in this state;
- (ii) a flavored malt beverage to:
 - (A) the department; or
 - (B) a military installation; or
- (iii) if a small brewer, beer to one of the following in the state:
 - (A) a beer wholesaler licensee;
 - (B) a beer retailer; or
 - (C) an event permittee.

(c) To obtain a certificate of approval, a brewer shall submit to the department:

- (i) a written application in a form prescribed by the department;
- (ii) a nonrefundable \$75 application fee;
- (iii) an initial certificate of approval fee of \$300 that is refundable if a certificate of approval is not issued;

(iv) evidence of authority from the federal Alcohol and Tobacco Tax and Trade Bureau of the United States Department of the Treasury to brew beer, heavy beer, or a

flavored malt beverage; and

(v) any other information the commission or department may require.

(d) (i) One of the following shall sign and verify a written application under this Subsection (4) by oath or affirmation:

(A) a partner if the brewer is a partnership; or

(B) an executive officer, manager, or person specifically authorized by a corporation or limited liability company to sign the application.

(ii) A brewer filing an application shall attach to the application written evidence of the authority of the person described in Subsection (4)(d)(i) to sign the application.

(e) (i) A certificate of approval under this Subsection (4) expires on December 31 of each year.

(ii) A brewer desiring to renew its certificate of approval shall submit to the department by no later than November 30 of the year the certificate of approval expires:

(A) a completed renewal application in the form prescribed by the department; and

(B) a renewal fee of \$250.

(iii) Failure to meet the renewal requirements results in an automatic forfeiture of the certificate of approval effective on the date the existing certificate of approval expires.

(5) (a) An importer or supplier of beer, heavy beer, or flavored malt beverages who is not required to be licensed under this title shall obtain a certificate of approval from the department before selling or delivering:

(i) beer to a beer wholesaler licensee in this state; or

(ii) heavy beer or a flavored malt beverage to:

(A) the department; or

(B) a military installation.

(b) To obtain a certificate of approval, an importer or supplier described in Subsection (5)(a) shall submit to the department:

(i) a written application in a form prescribed by the department;

(ii) a nonrefundable \$75 application fee;

(iii) an initial certificate of approval fee of \$300 that is refundable if a certificate of approval is not issued;

(iv) evidence of authority from the federal Alcohol and Tobacco Tax and Trade Bureau of the United States Department of the Treasury to brew beer, heavy beer, or a flavored malt beverage; and

(v) any other information the commission or department may require.

(c) (i) One of the following shall sign and verify a written application under this Subsection (5) by oath or affirmation:

(A) a partner if the importer or supplier is a partnership; or

(B) an executive officer, manager, or person specifically authorized by a corporation or limited liability company to sign the application.

(ii) An importer or supplier filing an application under this Subsection (5) shall attach to the application written evidence of the authority of the person described in Subsection (5)(c)(i) to sign the application.

(d) (i) A certificate of approval under this Subsection (5) expires on December 31 of each year.

(ii) An importer or supplier desiring to renew its certificate of approval shall submit to the department by no later than November 30 of the year the certificate of approval expires:

(A) a completed renewal application in the form prescribed by the department; and

(B) a renewal fee of \$250.

(iii) Failure to meet the renewal requirements results in an automatic forfeiture of the certificate of approval effective on the date the existing certificate of approval expires.

(6) (a) Subject to Subsection (7), a brewer, importer, or supplier required to hold a certificate of approval under this section may not distribute beer in this state except under a written agreement with a beer wholesaler licensee in this state.

(b) An agreement described in Subsection (6)(a) shall:

(i) create a restricted exclusive sales territory that is mutually agreed upon by the persons entering into the agreement;

(ii) designate the one or more brands that may be distributed in the sales territory; and

(iii) set forth the exact geographical area of the sales territory.

(c) A brewer, importer of beer, or supplier of beer may have more than one agreement described in this Subsection (6) if each brand of the brewer, importer, or supplier distributed in the state is covered by one exclusive sales territory.

(d) A brewer, importer of beer, or supplier of beer may not enter into an agreement with more than one beer wholesaler licensee to distribute the same brand of beer in the same sales territory or any portion of the sales territory.

(7) A small brewer is not subject to the requirements of Subsection (6).

Amended by Chapter 334, 2011 General Session

32B-11-202. Exemption for manufacture in personal residence of fermented beverage.

(1) As used in this section, "fermented alcoholic beverage" means:

(a) beer;

(b) heavy beer; or

(c) wine.

(2) An individual may without being licensed under this chapter manufacture in the individual's personal residence a fermented alcoholic beverage if:

(a) the individual is 21 years of age or older;

(b) the individual manufactures no more than:

(i) 100 gallons in a calendar year, if there is one individual that is 21 years of age or older residing in the household; or

(ii) 200 gallons in a calendar year, if there are two or more individuals who are 21 years of age or older residing in the household;

(c) the fermented alcoholic beverage is manufactured and used for personal or family use and consumption, including use at an organized event where fermented alcoholic beverages are judged as to taste and quality; and

(d) the fermented alcoholic beverage is not for:

- (i) sale or offering for sale; or
- (ii) consumption on a licensed premise.
- (3) An individual may store a fermented alcoholic beverage manufactured as provided in Subsection (2) in the individual's personal residence.
- (4) A fermented alcoholic beverage manufactured in accordance with Subsection (2) may be removed from the premises where it is manufactured:
 - (a) for personal or family use, including use at an organized event where fermented alcoholic beverages are judged as to taste and quality;
 - (b) if the fermented alcoholic beverage is transported in compliance with Section 41-6a-526; and
 - (c) if the fermented alcoholic beverage is removed only in the following quantities:
 - (i) for personal and family use that is unrelated to an organized event where fermented alcoholic beverages are judged as to taste and quality, the quantity that may be possessed at one time is:
 - (A) one liter of wine for each individual who is 21 years of age or older residing in the household;
 - (B) 72 ounces of heavy beer for each individual who is 21 years of age or older residing in the household; or
 - (C) 72 ounces of beer for each individual who is 21 years of age or older residing in the household; and
 - (ii) for on-premise consumption at an organized event where fermented alcoholic beverages are judged as to taste and quality, the quantity that may be removed for each organized event is:
 - (A) one liter of wine for each wine category in which the individual enters, except that the individual may not remove wine for more than three categories for the same organized event;
 - (B) 72 ounces of heavy beer for each heavy beer category in which the individual enters, except that the individual may not remove heavy beer for more than three categories for the same organized event; or
 - (C) 72 ounces of beer for each beer category in which the individual enters, except that the individual may not remove beer for more than three categories for the same organized event.
- (5) A partnership, corporation, or association may not manufacture a fermented alcoholic beverage under this section for personal or family use and consumption without obtaining a license under this chapter, except that an individual who operates a brewery under this chapter as an individual owner or in partnership with others, may remove beer from the brewery for personal or family use in the amounts described in Subsection (2)(b).

Enacted by Chapter 276, 2010 General Session

32B-11-203. Application requirements for a manufacturing license.

To obtain an alcoholic product manufacturing license, a person shall submit to the department:

- (1) a written application in a form prescribed by the department;

- (2) a nonrefundable application fee of \$300;
- (3) an initial license fee of \$3,800:
 - (a) unless otherwise provided in this chapter; and
 - (b) that is refundable if a license is not issued;
- (4) written consent of the local authority;
- (5) a statement of the purpose for which the person has applied for the manufacturing license;
- (6) evidence that the person is authorized by the United States to manufacture an alcoholic product;
- (7) a bond as specified by Section 32B-11-207;
- (8) evidence that the person is carrying public liability insurance in an amount and form satisfactory to the department;
- (9) a signed consent form stating that the manufacturing licensee will permit any authorized representative of the commission, department, or any law enforcement officer to have unrestricted right to enter the licensed premises;
- (10) if the person is an entity, proper verification evidencing that a person who signs the application is authorized to sign on behalf of the entity; and
- (11) any other information the commission or department may require.

Amended by Chapter 334, 2011 General Session

32B-11-204. Renewal requirements for a manufacturing license.

- (1) A manufacturing license expires on December 31 of each year.
- (2) To renew a manufacturing license, a person shall submit by no later than November 30 of the year the license expires:
 - (a) a completed renewal application to the department, in a form prescribed by the department; and
 - (b) a renewal fee in the following amount of:
 - (i) \$2,900, except for a wine manufacturing license described in Subsection (2)(b)(ii); or
 - (ii) \$1,400 for a winery manufacturing license if the winery manufacturing licensee produces less than 20,000 gallons of wine in the calendar year preceding the year in which the manufacturing licensee seeks renewal.
- (3) Failure to meet the renewal requirements results in an automatic forfeiture of a manufacturing license effective on the date the existing manufacturing license expires.

Amended by Chapter 334, 2011 General Session

32B-11-205. Specific qualifications for a manufacturing license.

- (1) The commission may not issue a manufacturing license to a person who:
 - (a) is disqualified under Section 32B-1-304; or
 - (b) has not met an applicable federal requirement for the operation of a winery, distillery, or brewery.
- (2) If a person to whom a manufacturing license is issued under this chapter no longer possesses the qualifications required by this title for obtaining that manufacturing

license, the commission may suspend or revoke that manufacturing license.

Enacted by Chapter 276, 2010 General Session

32B-11-206. Duties of commission and department before issuing manufacturing license.

(1) (a) Before the commission may issue a manufacturing license, the department shall conduct an investigation and may hold public hearings to gather information and make recommendations to the commission as to whether a manufacturing license should be issued.

(b) The department shall forward to the commission the information and recommendations under Subsection (1)(a) to aid in the commission's determination.

(2) Before issuing a manufacturing license, the commission shall:

(a) determine that the person filed a complete application and is in compliance with:

(i) Sections 32B-11-203 and 32B-11-205; and

(ii) the relevant part under this chapter for the specific type of manufacturing license;

(b) determine that the person is not disqualified under Section 32B-1-304;

(c) consider the physical characteristics of the premises where an alcoholic product is proposed to be stored, mixed, or manufactured such as:

(i) condition of the premises; and

(ii) safety and security considerations;

(d) consider the person's ability to properly use the manufacturing license within the requirements of this title and the commission rules including:

(i) manufacturing capacity;

(ii) extent of product distribution; and

(iii) the nature and type of entity making use of the manufacturing license;

(e) consider any special factor as provided in this chapter that may be unique to the specific type of manufacturing license sought by the person;

(f) approve of the location and equipment used by the person to manufacture an alcoholic product; and

(g) consider any other factor the commission considers necessary.

Enacted by Chapter 276, 2010 General Session

32B-11-207. Bond for manufacturing license.

(1) (a) A manufacturing licensee shall post a cash bond or surety bond in the penal sum of \$10,000 payable to the department.

(b) A manufacturing licensee shall procure and maintain a bond required by this section for as long as the manufacturing licensee continues to operate as a manufacturing licensee.

(2) A bond posted under this section shall be:

(a) in a form approved by the attorney general; and

(b) conditioned upon a manufacturing licensee's faithful compliance with this title and the rules of the commission.

(3) If a surety bond posted by a manufacturing licensee under this section is cancelled due to a manufacturing licensee's negligence, the department may assess a \$300 reinstatement fee.

(4) No part of a bond posted under this section may be withdrawn during the period the manufacturing license is in effect.

(5) (a) A bond posted by a manufacturing licensee under this section may be forfeited if the manufacturing license is revoked.

(b) Notwithstanding Subsection (5)(a), the department may make a claim against a bond posted by a manufacturing licensee for money owed the department under this title without the commission first revoking the manufacturing license.

Enacted by Chapter 276, 2010 General Session

32B-11-208. General operational requirements for manufacturing license.

(1) (a) A manufacturing licensee and staff of the manufacturing licensee shall comply with this title and the rules of the commission, including the relevant part of this chapter applicable to the type of manufacturing license held by the manufacturing licensee.

(b) Failure to comply as provided in Subsection (1)(a) may result in disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

- (i) a manufacturing licensee;
- (ii) individual staff of a manufacturing licensee; or
- (iii) a manufacturing licensee and staff of the manufacturing licensee.

(2) A manufacturing licensee shall prominently display the manufacturing license on the licensed premises.

(3) (a) A manufacturing licensee shall make and maintain the records required by the department.

(b) Section 32B-1-205 applies to a record required to be made or maintained in accordance with this Subsection (3).

(4) A manufacturing licensee may not sell liquor within the state except to:

- (a) the department; or
- (b) a military installation.

(5) A manufacturing license may not be transferred from one location to another location, without prior written approval of the commission.

(6) (a) A manufacturing licensee may not sell, transfer, assign, exchange, barter, give, or attempt in any way to dispose of the license to another person, whether for monetary gain or not.

(b) A manufacturing license has no monetary value for any type of disposition.

(7) A manufacturing licensee may not advertise its product in violation of this title or any other federal or state law, except that nothing in this title prohibits the advertising or solicitation of an order for industrial alcohol from a holder of a special use permit.

(8) A manufacturing licensee shall from time to time, on request of the department, furnish for analytical purposes a sample of the alcoholic product that the manufacturing licensee has:

- (a) for sale; or
- (b) in the course of manufacture for sale in this state.

(9) The commission may prescribe by policy or rule, consistent with this title, the general operational requirements of a manufacturing licensee relating to:

- (a) physical facilities;
- (b) conditions of storage, sale, or manufacture of an alcoholic product;
- (c) storage and sales quantity limitations; and
- (d) other matters considered appropriate by the commission.

Enacted by Chapter 276, 2010 General Session

32B-11-209. Notifying department of change in ownership.

The commission may suspend or revoke a manufacturing license if the manufacturing licensee does not immediately notify the department of a change in:

- (1) ownership of the manufacturing licensee;
- (2) for a corporate owner, the:
 - (a) corporate officers or directors; or
 - (b) shareholders holding at least 20% of the total issued and outstanding stock of the corporation; or
- (3) for a limited liability company:
 - (a) managers; or
 - (b) members owning at least 20% of the limited liability company.

Enacted by Chapter 276, 2010 General Session

32B-11-301. Title.

This part is known as "Winery Manufacturing License."

Enacted by Chapter 276, 2010 General Session

32B-11-302. Definitions.

Reserved

Enacted by Chapter 276, 2010 General Session

32B-11-303. Specific authority and operational requirements for winery manufacturing license.

- (1) A winery manufacturing license allows a winery manufacturing licensee to:
 - (a) store, manufacture, transport, import, or export wine;
 - (b) sell wine at wholesale to the department and to out-of-state customers;
 - (c) purchase liquor for fortifying wine, if the department is notified of the purchase and date of delivery; and
 - (d) warehouse on the licensed premises liquor that is manufactured or purchased for manufacturing purposes.
- (2) (a) A wine, brandy, wine spirit, or other liquor imported under authority of a winery manufacturing license shall conform to the standards of identity and quality established in the regulations issued under Federal Alcohol Administration Act, 27 U.S.C. Sec. 201 et seq.

(b) The federal definitions, standards of identity, and quality and labeling requirements for wine, in regulations issued under Federal Alcohol Administration Act, 27 U.S.C. Sec. 201 et seq., are adopted to the extent the regulations are not contrary to or inconsistent with the laws of this state.

(3) If considered necessary, the commission or department may require:

(a) the alteration of the plant, equipment, or licensed premises;
(b) the alteration or removal of unsuitable wine-making equipment or material;
(c) a winery manufacturing licensee to clean, disinfect, ventilate, or otherwise improve the sanitary and working conditions of the plant, licensed premises, and wine-making equipment;

(d) that a marc, pomace, or fruit be destroyed, denatured, or removed from the licensed premises because it is considered:

(i) unfit for wine making; or
(ii) as producing or likely to produce an unsanitary condition;
(e) a winery manufacturing licensee to distill or cause to be distilled or disposed of under the department's supervision:

(i) any unsound, poor quality finished wine; or
(ii) unfinished wine that will not be satisfactory when finished; or
(f) that a record pertaining to the grapes and other materials and ingredients used in the manufacture of wine be available to the commission or department upon request.

(4) A winery manufacturing licensee may not permit wine to be consumed on its premises, except under the following circumstances:

(a) A winery manufacturing licensee may allow its staff to consume on the licensed premises wine as the winery manufacturing licensee furnishes to the staff without charge.

(b) A winery manufacturing licensee may allow a person who can lawfully purchase wine for wholesale or retail distribution to consume a bona fide sample of the winery manufacturing licensee's product on the licensed premises.

(c) A winery manufacturing licensee may operate on its licensed premises a retail facility allowing consumption of a sample on the licensed premises of wine as long as food is also available. This type of retail facility located on the licensed premises shall be operated or supervised by the winery manufacturing licensee.

Enacted by Chapter 276, 2010 General Session

32B-11-401. Title.

This part is known as "Distillery Manufacturing License."

Enacted by Chapter 276, 2010 General Session

32B-11-402. Definitions.

Reserved

Enacted by Chapter 276, 2010 General Session

32B-11-403. Specific authority and operational requirements for distillery manufacturing license.

(1) A distillery manufacturing license allows a distillery manufacturing licensee to:

- (a) store, manufacture, transport, import, or export liquor;
- (b) sell liquor to:
 - (i) the department;
 - (ii) an out-of-state customer; and
 - (iii) as provided in Subsection (2);
- (c) purchase an alcoholic product for mixing and manufacturing purposes if the department is notified of:
 - (i) the purchase; and
 - (ii) the date of delivery; and
- (d) warehouse on its licensed premises an alcoholic product that the distillery manufacturing licensee manufactures or purchases for manufacturing purposes.

(2) (a) Subject to the other provisions of this Subsection (2), a distillery manufacturing licensee may directly sell an alcoholic product to a person engaged within the state in:

- (i) a mechanical or industrial business that requires the use of an alcoholic product; or
- (ii) scientific pursuits that require the use of an alcoholic product.

(b) A person who purchases an alcoholic product under Subsection (2)(a) shall hold a valid special use permit issued in accordance with Chapter 10, Special Use Permit Act, authorizing the use of the alcoholic product.

(c) A distillery manufacturing licensee may sell to a special use permittee described in Subsection (2)(b) an alcoholic product only in the type for which the special use permit provides.

(d) The sale of an alcoholic product under this Subsection (2) is subject to rules prescribed by the department and the federal government.

(3) The federal definitions, standards of identity and quality, and labeling requirements for distilled liquor, in the regulations issued under Federal Alcohol Administration Act, 27 U.S.C. Sec. 201 et seq., are adopted to the extent the regulations are not contrary to or inconsistent with laws of this state.

(4) If considered necessary, the commission or department may require:

- (a) the alteration of the plant, equipment, or licensed premises;
- (b) the alteration or removal of unsuitable alcoholic product-making equipment or material;

(c) a distillery manufacturing licensee to clean, disinfect, ventilate, or otherwise improve the sanitary and working conditions of the plant, licensed premises, and equipment; or

(d) that a record pertaining to the materials and ingredients used in the manufacture of an alcoholic product be made available to the commission or department upon request.

(5) A distillery manufacturing licensee may not permit an alcoholic product to be consumed on its premises, except that:

- (a) a distillery manufacturing licensee may allow its staff to consume on the

licensed premises an alcoholic product that the distillery furnishes to the staff without charge; and

(b) a distillery manufacturing licensee may allow a person who can lawfully purchase an alcoholic product for wholesale or retail distribution to consume a bona fide sample of the distillery manufacturing licensee's product on the licensed premises.

Enacted by Chapter 276, 2010 General Session

32B-11-501. Title.

This part is known as "Brewery Manufacturing License."

Enacted by Chapter 276, 2010 General Session

32B-11-502. Definitions.

Reserved

Enacted by Chapter 276, 2010 General Session

32B-11-503. Specific authority and operational requirements for brewery manufacturing license.

(1) A brewery manufacturing license allows a brewery manufacturing licensee to:

(a) store, manufacture, brew, transport, or export beer, heavy beer, and flavored malt beverages;

(b) sell heavy beer and a flavored malt beverage to:

(i) the department;

(ii) a military installation; or

(iii) an out-of-state customer;

(c) sell beer to a beer wholesaler licensee;

(d) in the case of a small brewer, in accordance with Subsection (5), sell beer manufactured by the small brewer to:

(i) a retail licensee;

(ii) an off-premise beer retailer; or

(iii) an event permittee; and

(e) warehouse on its premises an alcoholic product that the brewery manufacturing licensee manufactures or purchases for manufacturing purposes.

(2) A brewery manufacturing licensee may not sell the following to a person within the state except the department or a military installation:

(a) heavy beer; or

(b) a flavored malt beverage.

(3) If considered necessary, the commission or department may require:

(a) the alteration of the plant, equipment, or licensed premises;

(b) the alteration or removal of any unsuitable alcoholic product-making equipment or material;

(c) a brewery manufacturing licensee to clean, disinfect, ventilate, or otherwise improve the sanitary and working conditions of the plant, licensed premises, and

equipment; or

(d) that a record pertaining to the materials and ingredients used in the manufacture of an alcoholic product be available to the commission or department upon request.

(4) A brewery manufacturing licensee may not permit any beer, heavy beer, or flavored malt beverage to be consumed on the licensed premises, except under the circumstances described in this Subsection (4).

(a) A brewery manufacturing licensee may allow its off-duty staff to consume beer, heavy beer, or a flavored malt beverage on its premises without charge.

(b) A brewery manufacturing licensee may allow a person who can lawfully purchase the following for wholesale or retail distribution to consume a bona fide sample of the brewery manufacturing licensee's product on the licensed premises:

- (i) beer;
- (ii) heavy beer; or
- (iii) a flavored malt beverage.

(c) (i) A brewery manufacturing licensee may operate on its licensed premises a retail facility allowing consumption on premises of beer in a bottle or on draft if food is also available.

(ii) A retail facility located on the licensed premises of a brewery manufacturing licensee shall be operated or supervised by the brewery manufacturing licensee.

(iii) In operating a retail facility under this Subsection (4)(c), a brewery manufacturing licensee shall comply with the requirements of Chapter 7, Part 2, Off-premise Beer Retailer Local Authority.

(5) (a) A small brewer shall own, lease, or maintain and control a warehouse facility located in this state for the storage of beer to be sold to a person described in Subsection (1)(d) if the small brewer:

- (i) (A) (I) is located in this state; and
- (II) holds a brewery manufacturing license; or
- (B) (I) is located outside this state; and
- (II) holds a certificate of approval to sell beer in this state; and

(ii) sells beer manufactured by the small brewer directly to a person described in Subsection (1)(d).

(b) A small brewer may not sell beer to a person described in Subsection (1)(d) unless the beer:

- (i) is manufactured by the small brewer; and
- (ii) is first placed in the small brewer's warehouse facility in this state.

(c) (i) A small brewer warehouse shall make and maintain complete beer importation, inventory, tax, distribution, sales records, and other records as the department and State Tax Commission may require.

- (ii) The records described in Subsection (5)(c)(i) are subject to inspection by:
 - (A) the department; and
 - (B) the State Tax Commission.

(iii) Section 32B-1-205 applies to a record required to be made or maintained in accordance with this Subsection (5), except that the provision is considered to include an action described in Section 32B-1-205 made for the purpose of deceiving the State Tax Commission, or an official or employee of the State Tax Commission.

- (6) Subject to Subsection (7):
 - (a) A brewery manufacturing licensee may not sell beer in this state except under a written agreement with a beer wholesaler licensee in this state.
 - (b) An agreement described in Subsection (6)(a) shall:
 - (i) create a restricted exclusive sales territory that is mutually agreed upon by the persons entering into the agreement;
 - (ii) designate the one or more brands that may be distributed in the sales territory; and
 - (iii) set forth the exact geographical area of the sales territory.
 - (c) A brewery manufacturing licensee may have more than one agreement described in this Subsection (6) if each brand of the brewery manufacturing licensee is covered by one exclusive sales territory.
 - (d) A brewery manufacturing licensee may not enter into an agreement with more than one beer wholesaler licensee to distribute the same brand of beer in the same sales territory or any portion of the sales territory.
- (7) A small brewer is not subject to the requirements of Subsection (6).

Amended by Chapter 334, 2011 General Session

32B-11-601. Title.

This part is known as the "Local Industry Representative License Act."

Enacted by Chapter 276, 2010 General Session

32B-11-602. Definitions.

Reserved

Enacted by Chapter 276, 2010 General Session

32B-11-603. Commission's power to issue local industry representative license.

- (1) (a) Before a person described in Subsection (2) may represent an alcoholic product of a manufacturer, supplier, or importer, the person shall obtain a local industry representative license from the commission in accordance with this part.
- (b) A violation of this Subsection (1) is a class B misdemeanor.
- (2) The commission may issue a local industry representative license to a person who is:
 - (a) (i) an individual resident of Utah;
 - (ii) a Utah partnership;
 - (iii) a Utah corporation; or
 - (iv) a Utah limited liability company; and
 - (b) employed by a manufacturer, supplier, or importer, to represent a liquor product with the department, a package agency, licensee, or permittee under this title, whether compensated by salary, commission, or another means.
- (3) An individual staff member of a local industry representative licensee is not required to be separately licensed.

(4) A local industry representative may represent more than one manufacturer, supplier, or importer at a time.

(5) (a) A manufacturer, supplier, or importer is not required to use a local industry representative to represent its products with the department, a package agency, licensee, or permittee, except that staff of a manufacturer, supplier, or importer who is not a local industry representative shall register with the department, on a form provided by the department, before the staff represents an alcoholic product while in the state with the department, a package agency, licensee, or permittee.

(b) A manufacturer, supplier, or importer described in Subsection (5)(a) and its staff are subject to the same operational requirements of this part and Chapter 4, Criminal Offenses and Procedure Act.

Enacted by Chapter 276, 2010 General Session

32B-11-604. Application for local industry representative license.

(1) To obtain a local industry representative license, a person shall submit to the department:

- (a) a written application in a form prescribed by the department;
 - (b) a nonrefundable \$75 application fee;
 - (c) an initial license fee of \$125, which is refundable if a local industry representative license is not issued;
 - (d) verification that the person is:
 - (i) a resident of Utah;
 - (ii) a Utah partnership;
 - (iii) a Utah corporation; or
 - (iv) a Utah limited liability company;
 - (e) an affidavit stating the name and address of any manufacturer, supplier, or importer the person will represent;
 - (f) a signed consent form stating that the local industry representative will permit any authorized representative of the commission, department, or any law enforcement officer to have an unrestricted right to enter, during normal business hours, the specific premises where the local industry representative conducts business;
 - (g) if the person is an entity, proper verification evidencing that a person who signs the application is authorized to sign on behalf of the entity; and
 - (h) any other information the commission or department may require.
- (2) A local industry representative licensee is not required to pay an additional license fee to represent more than one manufacturer, supplier, or importer.

Amended by Chapter 334, 2011 General Session

32B-11-605. Renewal requirements for local industry representative license.

- (1) A local industry representative license expires on December 31 of each year.
- (2) To renew a local industry representative license, a person shall submit to the department by no later than November 30 of the year the license expires:
 - (a) a completed renewal application in a form prescribed by the department;

- (b) a renewal fee of \$125; and
- (c) an affidavit stating the name and address of any manufacturer, supplier, or importer the local industry representative licensee represents at the time of submitting the renewal application.

(3) Failure to meet the renewal requirements results in an automatic forfeiture of the local industry representative license effective on the date the existing local industry representative license expires.

Amended by Chapter 334, 2011 General Session

32B-11-606. Specific qualifications for local industry representative.

(1) The commission may not issue a local industry representative license to:

- (a) a person who is disqualified under Section 32B-1-304; or
- (b) unless otherwise provided:
 - (i) a retail licensee that sells, offers for sale, or furnishes liquor;
 - (ii) staff of a retail licensee that sells, offers for sale, or furnishes liquor; or
 - (iii) an individual, partnership, corporation, or limited liability company who holds an interest in a retail licensee that sells, offers for sale, or furnishes liquor.

(2) If a person to whom a local industry representative license is issued under this part no longer possesses the qualifications required by this title for obtaining that local industry representative license, the commission may suspend or revoke that local industry representative license.

Enacted by Chapter 276, 2010 General Session

32B-11-607. Commission and department duties before issuing local representative license.

(1) (a) Before the commission may issue a local industry representative license, the department shall conduct an investigation and may hold public hearings to gather information and make recommendations to the commission as to whether a local industry representative license should be issued.

(b) The department shall forward the information and recommendations described in Subsection (1)(a) to the commission to aid in the commission's determination.

(2) Before issuing a local industry representative license, the commission shall:

- (a) determine that the person filed a complete application and is in compliance with Sections 32B-11-604 and 32B-11-606;
- (b) determine that the person is not disqualified under Section 32B-1-304; and
- (c) consider any other factor the commission considers necessary.

Enacted by Chapter 276, 2010 General Session

32B-11-608. Operational requirements for local industry representative license.

(1) (a) A local industry representative licensee, staff of the local industry representative licensee, or staff of a manufacturer, supplier, or importer who is

conducting business in the state, shall comply with this title and rules of the commission.

(b) If a person knowingly violates Subsection (1)(a):

(i) the violation may result in disciplinary action in accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

(A) a local industry representative licensee;

(B) individual staff of a local industry representative licensee; or

(C) both a local industry representative licensee and staff of the local industry representative licensee; and

(ii) if the conditions of Subsection (1)(c) are met, the commission may order:

(A) the removal of the manufacturer's, supplier's, or importer's products from the department's sales list; and

(B) a suspension of the department's purchase of those products for a period determined by the commission.

(c) Subsection (1)(b)(ii) applies if the manufacturer, supplier, or importer:

(i) directly commits the violation; or

(ii) solicits, requests, commands, encourages, or intentionally aides another to engage in the violation.

(2) A local industry representative licensee shall display its license in the local industry representative licensee's principal place of business.

(3) (a) A local industry representative licensee shall maintain on file with the department a current accounts list of the names and addresses of the manufacturers, suppliers, and importers the local industry representative licensee represents.

(b) A local industry representative licensee shall notify the department in writing of a change to its accounts list within 14 days from the date the local industry representative licensee:

(i) acquires the account of a manufacturer, supplier, or importer; or

(ii) loses the account of a manufacturer, supplier, or importer.

(4) (a) A local industry representative licensee shall make and maintain the records the department requires for at least three years.

(b) Section 32B-1-205 applies to a record required to be made or maintained in accordance with this Subsection (4).

(5) Staff of a local industry representative licensee may not be:

(a) a retail licensee that sells, offers for sale, or furnishes liquor;

(b) staff of a retail licensee that sells, offers for sale, or furnishes liquor; or

(c) a minor.

(6) (a) A local representative licensee may not sell, transfer, assign, exchange, barter, give, or attempt in any way to dispose of the license to another person, whether for monetary gain or not.

(b) A local industry representative license has no monetary value for any type of disposition.

(7) A local industry representative licensee, staff of the local industry representative licensee, or staff of a manufacturer, supplier, or importer who is conducting business in the state:

(a) only to the extent authorized by Chapter 4, Criminal Offenses and Procedure Act, may:

- (i) assist the department in:
 - (A) ordering, shipping, and delivering merchandise;
 - (B) providing new product notification;
 - (C) obtaining listing and delisting information;
 - (D) receiving price quotations;
 - (E) providing product sales analysis;
 - (F) conducting shelf management; and
 - (G) conducting educational seminars; and
 - (ii) to acquire new listings:
 - (A) solicit orders from the department; and
 - (B) submit to the department price lists and samples of the products of the manufacturer, supplier, or importer;
 - (b) may not sell liquor within the state except to:
 - (i) the department; and
 - (ii) a military installation;
 - (c) may not ship or transport, or cause to be shipped or transported, liquor into this state or from one place to another within this state;
 - (d) may not sell or furnish any liquor to any person within this state other than to:
 - (i) the department; or
 - (ii) a military installation;
 - (e) except as otherwise provided, may not advertise a product the local industry representative licensee represents in violation of this title or any other federal or state law;
 - (f) shall comply with the trade practices provided in Chapter 4, Part 7, Trade Practices Act; and
 - (g) may only provide a sample of a product of the manufacturer, supplier, or importer for tasting and sampling purposes as provided in Section 32B-4-705 by the department.
- (8) A local industry representative licensee may, to become educated as to the quality and characteristics of a liquor that the licensee represents, taste and analyze an industry representative sample under the conditions listed in this Subsection (8).
- (a) A local industry representative licensee may not receive more than two industry representative samples of a particular type, vintage, and production lot of a particular branded product within a consecutive 120-day period.
- (b) (i) An industry representative sample of liquor may not exceed one liter.
- (ii) Notwithstanding Subsection (8)(b)(i), an industry representative sample of the following may not exceed 1.5 liters unless that exact product is only commercially packaged in a larger size, not to exceed 5 liters:
- (A) wine;
 - (B) heavy beer; or
 - (C) a flavored malt beverage.
- (c) An industry representative sample may only be of a product not presently listed on the department's sales list.
- (d) (i) An industry representative sample shall be shipped:
- (A) prepaid by the manufacturer, supplier, or importer;
 - (B) by common carrier and not via United States mail; and

- (C) directly to the department's central administrative warehouse office.
- (ii) An industry representative sample may not be shipped to any other location within the state.
- (e) An industry representative sample shall be accompanied by a letter from the manufacturer, supplier, or importer:
 - (i) clearly identifying the product as an "industry representative sample"; and
 - (ii) clearly stating:
 - (A) the FOB case price of the product; and
 - (B) the name of the local industry representative for whom it is intended.
- (f) The department shall assess a reasonable handling, labeling, and storage fee for each industry representative sample received.
- (g) The department shall affix to a container a label clearly identifying the product as an "industry representative sample."
- (h) The department shall:
 - (i) account for and record each industry representative sample received;
 - (ii) account for the industry representative sample's disposition; and
 - (iii) maintain a record of the industry representative sample and its disposition for a two-year period.
- (i) An industry representative sample may not leave the premises of the department's central administrative warehouse office.
- (j) A local industry representative licensee's and a local industry representative licensee's staff may, at regularly scheduled days and times established by the department, taste and analyze one or more industry representative samples on the premises of the department's central administrative warehouse office.
- (k) The department shall destroy the unused contents of an opened product remaining after a product is sampled under controlled and audited conditions established by the department.
- (l) An industry representative sample that is not tasted within 30 days of receipt by the department shall be disposed of at the discretion of the department in one of the following ways:
 - (i) the contents destroyed under controlled and audited conditions established by the department; or
 - (ii) added to the inventory of the department for sale to the public.

Amended by Chapter 307, 2011 General Session
Amended by Chapter 334, 2011 General Session

32B-11-609. Notifying department of change in ownership.

The commission may suspend or revoke a local industry representative license if a local industry representative licensee does not immediately notify the department of a change in:

- (1) ownership of the business;
- (2) for a corporate owner, the:
 - (a) corporate officers or directors; or
 - (b) shareholders holding at least 20% of the total issued and outstanding stock of the corporation; or

- (3) for a limited liability company:
 - (a) managers; or
 - (b) members owning at least 20% of the limited liability company.

Enacted by Chapter 276, 2010 General Session